

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP (797-1101)

SUBJECT: Resolution - Developers Agreement

DA 2-1-01, Hacienda Riverfront Plat - 3641 Canal Drive, Generally located at the northeast corner of State Road 84 and State Road 7.

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR TO ENTER INTO AGREEMENTS WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, AND AMERICAN VILLAGE DEVELOPMENT, LLC, RELATING TO THE BEAUTIFICATION OF THE ENTRY ROAD INTO THE "HACIENDA COVE APARTMENTS" PROJECT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURE TO SAID AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

On June 16, 1999, Town Council approved the site development plan for the "Hacienda Cove" a 317 unit project consisting of nine townhouse buildings with a total of 56 units, and twelve multi-story multi-family buildings with a total of 261 units, subject to various conditions including the landscaping and maintenance of the entry road from State Road 84 into the subject project.

The attached agreements between the Town of Davie, the State of Florida Department of Transportation (FDOT) and American Village Development, LLC, provide for the installation of specific landscaping, irrigation and maintenance of the same in perpetuity. The State of Florida Department of Transportation will not permit landscaping in its rights-of-way without first executing an installation and maintenance agreement for the same.

It is the State of Florida Department of Transportation policy to enter into an agreement only with a local government. It is then up to the local government to relinquishes its responsibilities to the property owner. Therefore, two (2) agreements are attached, one between FDOT and the Town of Davie and one between the Town and American Village Development, LLC..

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: Not Applicable

RECOMMENDATION(S): Motion to approve.

Attachment(s): Resolution, Agreements, Land Use map, Subject Site map, and Aerial.

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR TO ENTER INTO AGREEMENTS WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, AND AMERICAN VILLAGE DEVELOPMENT, LLC, RELATING TO THE BEAUTIFICATION OF THE ENTRY ROAD INTO THE "HACIENDA COVE APARTMENTS" PROJECT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURE TO SAID AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is considered in the best interest of the Town of Davie, Florida, to enter into agreements with the State of Florida Department of Transportation and American Village Development, LLC, for the beautification of the entry road into the "Hacienda Cove Apartments" project from State Road 84; and

WHEREAS, the Town desires to authorize execution of said agreements, attached hereto as Exhibit "A" and "B".

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into Agreements, attached hereto as Exhibit "A" and "B", with the State of Florida Department of Transportation, and American Village Development, LLC, for the beautification of the entry road into the "Hacienda Cove Apartments" project from State Road 84, in Broward County, Florida.

SECTION 2. The Mayor and Town Administrator are authorized to sign such agreement on behalf of the Town and the Town Clerk is directed to affix the Town's seal to such Agreement.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2001.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2001.

EXHIBIT A

**DISTRICT FOUR (4)
MAINTENANCE MEMORANDUM OF AGREEMENT
DSF- MAINTENANCE ONLY**

THIS AGREEMENT, made and entered into this day of _____, 20____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **"DEPARTMENT"** and the _____ Town of Davie _____, a Municipal Corporation of the State of Florida, located in Broward County, existing under the Laws of Florida, hereinafter called the **"AGENCY"**,

WITNESSETH

WHEREAS, as part of the continual updating of the State of Florida Highway System, the Department, for the purpose of safety, protection of the investment and other reasons, has constructed and does maintain a _____2_____ lane access road facility as described in Exhibit "A" attached hereto and incorporated by reference herein, within the corporate limits of the **AGENCY**; and

WHEREAS, the **AGENCY** is of the opinion that said highway facility that contains landscape medians and areas outside the travel way to the right of way line, excluding sidewalk, shall be maintained by periodic trimming, cutting, mowing, fertilizing, litter pick- - up and necessary replanting; and

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the **AGENCY** by Resolution No. _____ dated _____, 20____, attached hereto and by this reference made a part hereof, desires to enter into this Agreement and authorizes its officers to do so;

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

- I. The **AGENCY** hereby agrees to install or cause to be installed landscaping on the highway facilities as specified in the plans and specifications hereinafter referred to as the Project; and incorporated herein as Exhibit "B", with if any, the following exceptions and conditions:
 - A. The current Florida of Department of Transportation Roadway and Traffic Design Standard index 546 must be adhered to,
 - B. Clear zone/horizontal clearance as specified in the Plans Preparation Manual - Metric Volume I, Chapter 2 must be adhered to as outlined on relevant sheets in Exhibit D,
 - C. Landscaping shall not obstruct roadside signs or permitted outdoor advertising signs;
 - D. If irrigation is to be installed, the Department shall be provided an accurate as built plans of the system so if in the future there is a need for the Department to pre-form work in the area, the system can be accommodated as much as possible,
 - E. If it becomes necessary to provide utilities to the median or side areas (water/electricity) it shall be the **AGENCY'S** responsibility to obtain a permit for such work through the local maintenance office,

- F. During the installation of the project and future maintenance operations, maintenance of traffic shall be in accordance with the 1988 edition of the MUTCD and the current Department Roadway and Traffic Design Standards (series 600).
- G. The **AGENCY** shall provide the local maintenance office located at _____ a twenty four (24) hour access telephone number and the name of a responsible that the Department may contact.
- H. If there is a need to restrict the normal traffic flow it shall be done on off peak hours (9AM to 3PM).
- I. The **AGENCY** shall be responsible to clear all utilities within the project limits.
- J. The **AGENCY** shall notify the local maintenance office forty - eight (48) hours prior to the start of the project(s).

- 2. The **AGENCY** agrees to maintain the landscaping within the median and areas outside the travel way to the right of way line, excluding sidewalk, by periodic trimming, cutting, mowing, fertilizing, litter pickup and necessary replanting, following the Department's landscape safety and plant care guidelines. The **AGENCY's** responsibility for maintenance shall include all landscape/turfed areas and areas covered with interlocking pavers or similar type surfacing (hardscape) within the median and areas outside the travel way to the right of way line, excluding sidewalk, on Department of Transportation right-of-way within the limits of the Project. Such maintenance to be provided by the **AGENCY** is specifically set out as follows:

To maintain, which means the proper watering and proper fertilization of all plants and keeping them as free as practicable from disease and harmful insects; to properly mulch the plant beds; to keep the premises free of weeds; to mow and/or cut the grass to a proper length; to properly prune all plants which includes (1) removing dead or diseased parts of plants, or (2) pruning such parts thereof which present a visual hazard for those using the roadway. To maintain also means removing or replacing dead or diseased plants in their entirety, or removing or replacing those that fall below original project standards. All plants removed for whatever reason shall be replaced by plants of the same size and grade as specified in the original plans and specifications. To maintain also means to keep the hardscape areas free from weeds and replacement of any areas becoming in disrepair so as to cause a safety hazard. To maintain also means to keep litter removed from the median and areas outside the travel way of the right of way line. Plants shall be those items which would be scientifically classified as plants and include but are not limited to trees, grass, or shrubs.

The above named functions to be performed by the **AGENCY**, shall be subject to periodic inspections by the Department. Such inspection findings will be shared with the **AGENCY** and shall be the basis of all decisions regarding reworking or agreement termination. The **AGENCY**

shall not change or deviate from said plans without written approval of the Department.

3. If at any time after the **AGENCY** has assumed the landscaping installation and/or maintenance responsibility above-mentioned, it shall come to the attention of the Department's District Secretary that the limits or a part thereof is not properly maintained pursuant to the terms of this Agreement, said District Secretary may at his option issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the **AGENCY** to place said **AGENCY** on notice thereof. Thereafter the **AGENCY** shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the Department may at its option, proceed as follows:
 - (a) Maintain the landscaping or a part thereof, with Department or Contractor's personnel and invoice the **AGENCY** for expenses incurred, or
 - (b) Terminate the Agreement in accordance with Paragraph 5 of this Agreement and remove, by Department or private contractor's personnel, all of the landscaping installed under this Agreement or any preceding agreements except as to trees and palms and charge the **AGENCY** the reasonable cost of such removal.
4. It is understood between the parties hereto that the landscaping covered by this Agreement may be removed, relocated, or adjusted at any time in the future as determined to be necessary by the Department in order that the adjacent state road be widened, altered or otherwise changed to meet with future criteria or planning of the Department. The Agency shall be given sixty (60) calendar days notice to remove said landscaping after which time the Department may remove same.
5. This Agreement may be terminated under any one of the following conditions:
 - (a) By the Department, if the **AGENCY** fails to perform its duties under Paragraph 3, following ten (10) days written notice.
 - (b) By the Department, for refusal by the **AGENCY** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 1-19, Florida Statutes and made or received by the **AGENCY** in conjunction with this Agreement.
6. The term of this Agreement commences upon execution.
7. To the extent permitted by law, the **AGENCY** shall indemnify and hold harmless the Department, its officers and employees from all suits, actions, claims and liability arising out of the **AGENCY**'s negligent performance of the work under this Agreement, or due to the

failure of the **AGENCY** to construct or maintain the project in conformance with the standards described in Section 2 of this agreement.

8. This writing embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
9. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year.
10. The Department's District Secretary shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.
11. This Agreement may not be assigned or transferred by the **AGENCY** in whole or part without the consent of the Department.
12. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the Agreement and Florida law, the laws of Florida shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

AGENCY

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____
Mayor/Council member

By: _____
District Secretary

Attest: _____ (SEAL)
Town Clerk Date

Attest: _____ (SEAL)
Executive Secretary

Town Attorney Date
Approval as to Form and Correctness

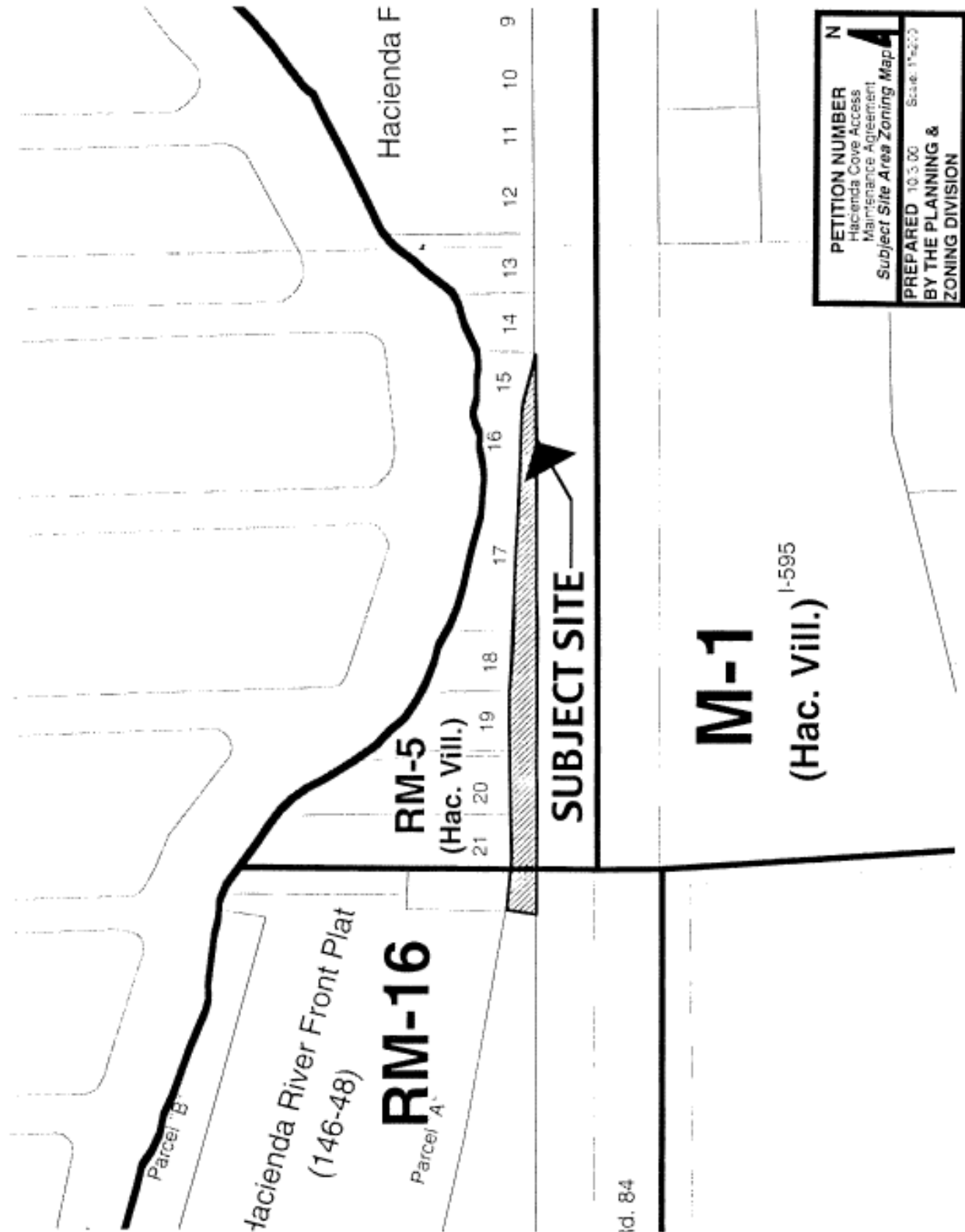
Approval as to Form Date

COUNTY: Broward
S.R. NO.: 84

EXHIBIT "A"

PROJECT LOCATION

SEE ATTACHED LOCATION MAP EXHIBIT "A"



COUNTY: Broward
S.R. NO.: 84

EXHIBIT "B"

The **AGENCY** agrees to install the Project with a contractor or their own forces in accordance with the plans and specifications attached hereto and incorporated herein.

SEE ATTACHED LANDSCAPE PLAN EXHIBIT "B"

EXHIBIT B

MAINTENANCE MEMORANDUM OF AGREEMENT MAINTENANCE ONLY

THIS AGREEMENT, made and entered into this day of _____, 2001, by and between the Town of Davie, hereinafter called the "Town" and American Village Development, LLC, D.B.A. Hacienda Cove Apartments, existing under the Laws of Florida, hereinafter called the "Owner".

WITNESSETH

WHEREAS, as part of the continual updating of the State of Florida Highway System, the Town for the purpose of safety, protection of the investment and other reasons, as constructed and does maintain a two (2) lane roadway facility as described in Exhibit "A" attached hereto and incorporated by reference herein, within the corporate limits of the TOWN; and

WHEREAS, the TOWN is of the opinion that said roadway facility that contains landscape medians and areas outside the travel way to the right of way line, excluding sidewalk, shall be maintained by periodic trimming, cutting, mowing, fertilizing, litter pick-up and necessary replanting, and

WHEREAS, the parties hereto mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party,

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. The Owner hereby agrees to install or cause to be installed landscaping on the roadway facilities as specified in the plans and specifications hereinafter referred to as the Project, and incorporated herein as Exhibit "B". The landscape & irrigation plan has been approved by the Florida Department of Transportation. Furthermore, the Owner warrants the following:
 - A. Landscaping shall not obstruct roadside signs or permitted outdoor advertising signs.
 - B. The Town shall be provided two (2) copies of an accurate as-built plan of the irrigation system, so if in the future there is a need for the Town or FDOT to perform work in the area, the system can be accommodated as much as possible.
 - C. The Owner shall provide a twenty four (24) hour access telephone number and the name of a responsible entity that the Town may contact. This entity is the manager's office for Hacienda Cove, and apartment community, who's number is 954-581-5554.
2. The Owner agrees to maintain the landscaping on the north & south side of the existing FDOT right-of-way fencing between S.R. 84 and the south side of Red Road. Owner agrees to maintain this area, excluding any sidewalk, by periodic trimming, cutting, mowing, fertilizing, litter pickup and necessary replanting, following the Town's landscape safety and plant care guidelines and the currently installed plant list. The Owner's responsibility for maintenance shall include all landscape/turfed areas within the median and areas the travel way to the right of way line, excluding sidewalk, on Department of Transportation right-of-way within limits of the Red Road leading to the Project. Such maintenance to be provided by the Owner is specifically set out as follows:

To maintain, which means the proper watering and proper fertilization of all plants and keeping them as free as practicable from disease and harmful insects, to properly mulch the plant beds, to keep the premises free of weeds, to mow and/or cut the grass to a proper length, to properly prune all plants which includes (1) removing dead or diseased parts of plants, or (2) pruning such parts thereof which present a visual hazard for those using the roadway. To maintain also means removing or replacing dead or diseased plants in their entirety, or removing or replacing those that fall below original project standards. All plants removed for whatever reason shall be replaced by plants of the same size and grade as specified in the original plans and specifications. To maintain also means to keep the landscape areas free from weeds and replacement of any areas becoming in disrepair so as to cause a safety hazard. To maintain also means to keep litter removed from the median and areas outside the travel way of the right of way line. Plants shall be those items which would be scientifically classified as plants and include but are not limited to trees, grass or shrubs.

The above named functions to be performed by the Owner shall be subject to periodic inspections by the Town and/or The Florida Department of Transportation (FDOT). Such inspection findings will be shared with the Owner and shall be the basis of all decisions regarding reworking or agreement termination. The Owner shall not change or deviate from said plans without written approval of the Department.

3. If at any time after the Owner has assumed the landscaping installation and/or maintenance responsibility above-mentioned, it shall come to the attention of the Town or the FDOT's District Secretary that the limits or a part thereof is not properly maintained pursuant to the terms of the Agreement, said Town may at their option issue a written notice that a deficiency or deficiencies exist(s) by sending a certified letter to the Owner to place said Owner on notice thereof. Thereafter the Owner shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the Department may at its option, proceed as follows:
 - (a) Maintain the landscaping or a part thereof, with Department or Contractor's personnel and invoice the Owner for expenses incurred, or
 - (b) Terminate the Agreement in accordance with paragraph 5 of this Agreement and remove, by the Town, FDOT or private contractor's personnel, all of the landscaping installed under this Agreement or any preceding agreements except as to trees and palms and charge the Owner the reasonable cost of such removal.
4. It is understood between the parties hereto that the landscaping covered by this Agreement may be removed, relocated, or adjusted at any time in the future as determined to be necessary by the Town or FDOT in order that the adjacent state road be widened, altered or otherwise changed to meet with future criteria or planning of the Department. The TOWN shall be given sixty (60) calendar days notice to remove said landscaping after which time the Department may remove the same.
5. This Agreement may be terminated under any one of the following conditions:
 - (a) By the Town, if the Owner fails to perform its duties under paragraph 3, following ten (10) days written notice.

6. The term of this Agreement commences upon execution and continues in perpetuity unless terminated as per sections three (3), four (4) and five (5) above as well as pursuant to the Agreement between the FDOT and the Town of Davie.
7. To the extent permitted by law, the Owner shall indemnify and hold harmless the Town, its officers and employees from all suits, actions, claims and liability arising out of the Owner's negligent performance of the work under this Agreement, or due to the failure of the Owner to construct or maintain the project in conformance with the standards described in Section 2 of this agreement.
8. This writing embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
9. The Town Administrator shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof, and his decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.
10. This Agreement shall run with the land and shall be assigned and/or transferred to any subsequent owner due to sale or transfer of deed by the Owner for the property known as Hacienda Cove.
11. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the Agreement and Florida law, the laws of Florida shall prevail.

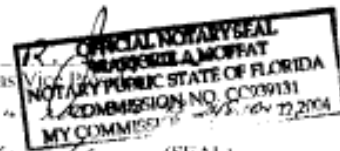
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written

Town of Davie

Owner: American Village
Development, LLC

By: _____
Mayor/Chairman/Administrator

By: Bruce R. Moffat
as Vice President
DRUEPAC, LLC
Attest: [Signature] (SEAL)
Notary



Attest: _____ (SEAL)
Clerk

Approval as to Form _____ Date _____

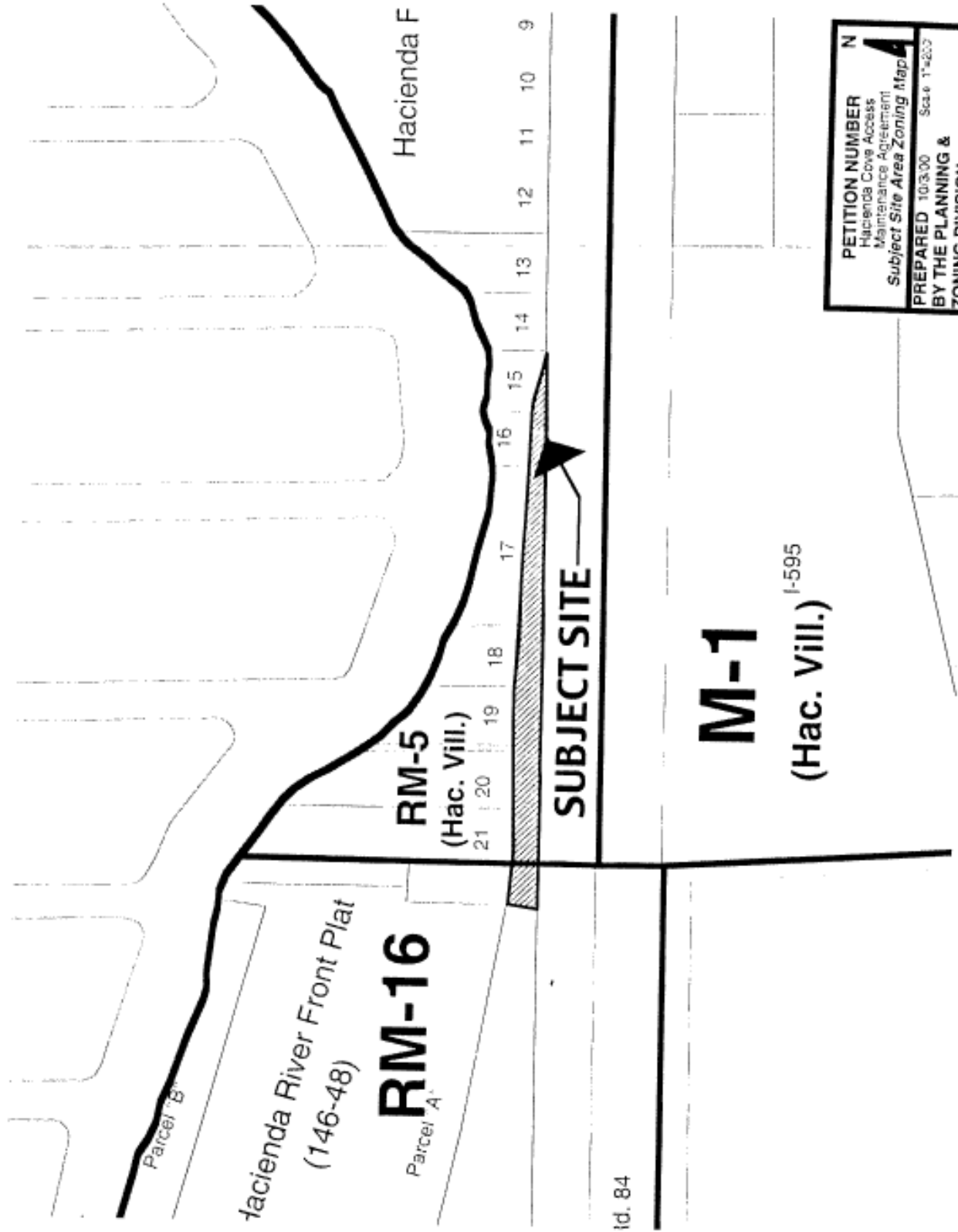
Approval as to Form _____ Date _____

County: Broward

S.R. No: 84 & Red Road

EXHIBIT "A"

PROJECT LOCATION: _____



County: Broward

S.R. No: _____

EXHIBIT "B"

The Owner agrees to install and Maintain the Project with a contractor or their own forces in accordance with the plans and specifications attached hereto and incorporated herein

PLEASE SEE ATTACHED PLANS

N. New River Canal

RESIDENTIAL
10 DU/AC

RESIDENTIAL
5 DU/AC

SUBJECT SITE

TRANSPORTATION

I-595

CONSERVATION

CONSERVATION

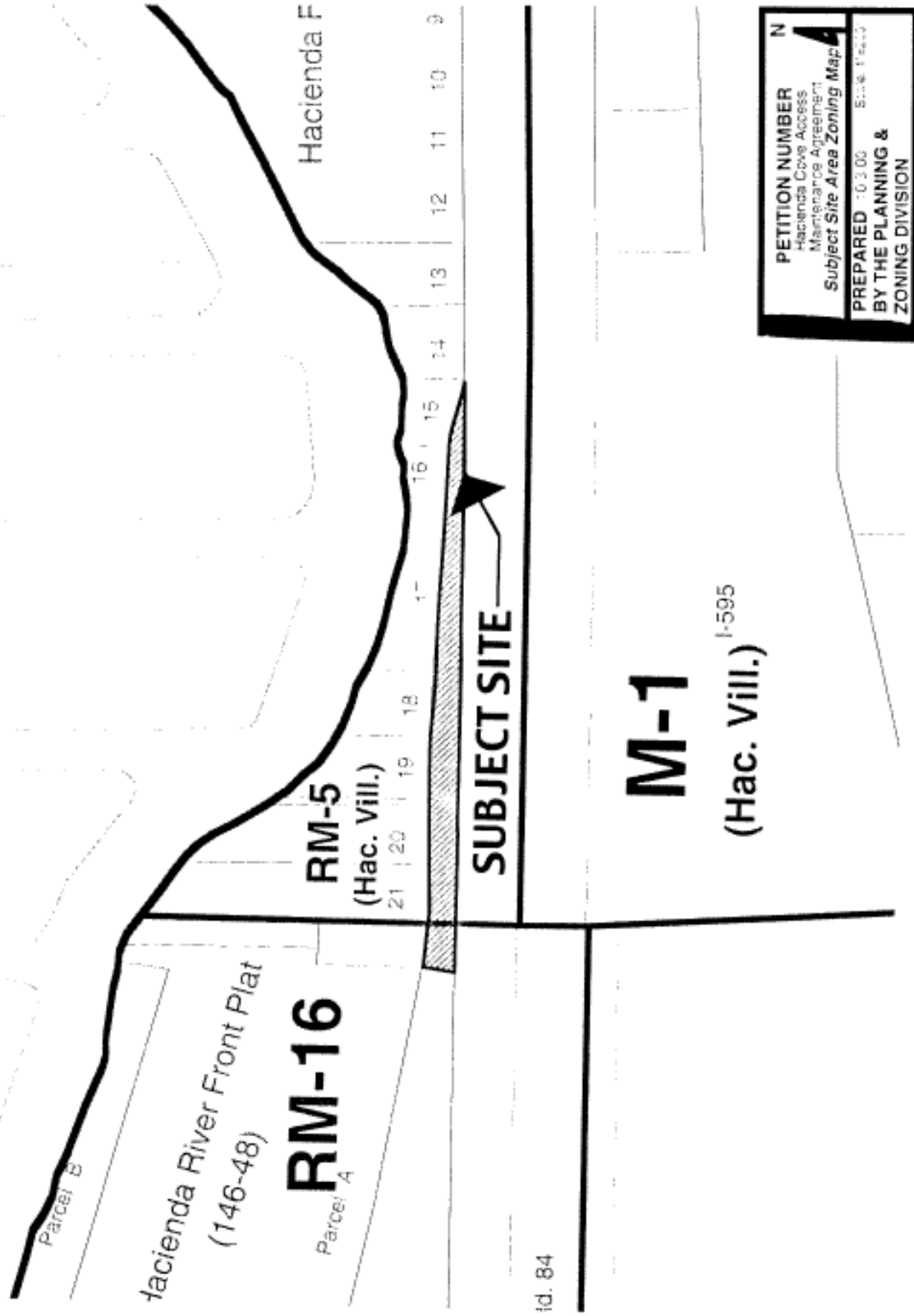
PETITION NUMBER

N

PLANNING & ZONING
SUBJECT SITE AREA
FUTURE LAND USE PLAN

PREPARED 3.25.01 SCALE 1"=20.0'

BY THE PLANNING &
ZONING DIVISION



PETITION NUMBER	N
Hacienda Cove Access	
Maintenance Agreement	
Subject Site Area Zoning Map	4
PREPARED	10/3/00
BY THE PLANNING & ZONING DIVISION	Scale 1"=400'

